

## Hague Case Law: Latest Developments

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### Permanent Court of Arbitration

- (1) *The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China)*

On 12 July 2016, an Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS) and facilitated by the Permanent Court of Arbitration (PCA) rendered its award in the dispute between the Philippines and China concerning the legal basis of maritime rights and entitlements in the South China Sea, the status of certain geographic features in the South China Sea, and the lawfulness of certain actions taken by China in the South China Sea.

Although China had repeatedly stated that it would not participate in the proceedings and refused to appear, the Tribunal established on 29 October 2015 that it had jurisdiction to hear this dispute and that the Philippines' claims were admissible. The Tribunal rejected the arguments raised by China in its 'Position Paper' of 7 December 2014, including the argument that the dispute was actually about the sovereignty of the maritime features in the South China Sea and about maritime delimitation, issues which would be beyond the Tribunal's jurisdiction. Further the Tribunal held, among other things, that there is no indispensable third party whose absence would deprive the Tribunal of its jurisdiction and that the 2002 China-ASEAN Declaration on the Conduct of Parties in the South China Sea did not constitute an agreement to resolve the disputes relating to the South China Sea

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exclusively through negotiation and did not bar the Philippines from instigating arbitral proceedings.

As far as the merits are concerned, the Tribunal ruled, among other things, that China did not have historic rights to resources in the South China Sea in the areas falling within the so-called ‘nine-dash line’ and which go beyond the limits of the maritime zones to which it is entitled under UNCLOS. China’s claims in the South China Sea therefore do not include a claim to ‘historic title’, within the meaning of Article 298(1)(a)(i) of the Convention, over the waters of the South China Sea. Further, the Tribunal held that none of the features claimed by China in the Exclusive Economic Zone (EEZ) of the Philippines and classified on their natural condition (so irrespective of any recent modifications), qualified as islands and were thus incapable of generating an EEZ or Continental Shelf. Additionally, the Tribunal found that China had breached its obligations under Articles 56, 58(3), 60 and 80 UNCLOS by violating the sovereign rights of the Philippines in its EEZ; and that China had breached its obligations under Articles 123, 192, 194(1), 194(5), 197 and 206 UNCLOS with respect to the protection and preservation of the marine environment in the South China Sea. Finally, the Tribunal declared that China had breached its obligation under Articles 279, 296 and 300 UNCLOS as well as under general international law by aggravating the dispute between both States during the time when dispute resolution was ongoing.

## International Criminal Tribunal for the Former Yugoslavia

### (1) *Prosecutor v. Stanišić and Župljanin (Appeals Chamber)*

On 30 June 2016, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) rendered its judgment on appeal in the case against Stanišić and Župljanin. Stanišić is the former Minister of the Interior of Republika Srpska; Župljanin is the former Chief of the Regional Security Services Centre of Banja Luka, and (between May and July 1992) was a member of the Crisis Staff of the Autonomous Region of Krajina (ARK). On 27 March 2013, they were convicted by Trial Chamber II of the ICTY of serious crimes committed in a large number of municipalities in Bosnia-Herzegovina and in the ARK in 1992 involving thousands of victims and at least 1735 individually named murder victims. According to the Trial Chamber they had participated in a joint criminal enterprise (JCE) between 1991 and 1995, the purpose of which was to permanently remove Bosnian Muslims, Bosnian Croats, and other non-Serbs from the territory of a planned Serbian state. Both men were sentenced to 22 years’ imprisonment.

Although the Appeals Chamber was critical of the Trial Chamber’s failure to provide cross-references to the evidence on record, which complicated the identification of underlying findings, and found a number of errors in the Trial Chamber’s judgment, it dismissed Stanišić’s and Župljanin’s appeals in their

entirety and affirmed their convictions. Further, the Appeals Chamber granted one of the Prosecutor's grounds of appeal since the Trial Chamber had erred to enter cumulative convictions for crimes against humanity for the same conduct. The Appeals Chamber affirmed their sentences of 22 years' imprisonment.

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